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IN THE  
SUPREME COURT OF THE UNITED STATES

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No. **78-593**

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SOUTH CAROLINA NATIONAL BANK

*Petitioner,*

*versus*

NORTH CAROLINA NATIONAL BANK

*Respondent.*

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PETITION FOR WRIT OF CERTIORARI

To The United States Court  
Of Appeals For  
The Fourth Circuit

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## TABLE OF CONTENTS

	Page
Opinions Below .....	1
Jurisdiction .....	2
Question Presented .....	2
Statutes Involved .....	2
Statement of the Case .....	3
Reasons for Granting the Writ .....	4
A. The decision of the Court of Appeals is contrary to the express language of §10.4-109 and §10.4-213(1)(c) of the Uniform Commercial Code, which applies to virtually all national banks.....	5
B. The Court of Appeals interpretation of §10.4-109 and §10.4-213(1)(c) of the Uniform Commercial Code conflicts with all other decisions interpreting these sections.....	6
Conclusion .....	9

## TABLE OF CONTENTS (Continued)

	Page
Appendix:	
A. Opinion No. 77-1242 filed April 18, 1978 .....	11
B. Denial of Petition for Rehearing filed May 12, 1978 .....	13
C. Order Extending Time to File Petition for Writ of Certiorari filed August 7, 1978 .....	14
D. Order of the United States District Court for the District of South Carolina dated October 26, 1976 .....	15
E. Judgment of the United States District Court for the District of the State of South Carolina dated October 27, 1976 .....	24
F. Amended Judgment of the United States District Court for the District of the State of South Carolina dated October 29, 1976 .....	25

## TABLE OF AUTHORITIES

	Page
Cases	
Barnett Bank of Tallahassee v. Capital City First National Bank, 348 So. 2d 643 (Fla. App. 1977) .....	7
Brown v. Southshore National Bank of Chicago, 273 N.E. 2d 671 (Ill. App. 1971) .....	7
Citizens & Peoples National Bank of Pensacola v. United States, 570 F. 2d 1279 (5th Cir. 1978) ..	7
Community Bank v. United States National Bank of Oregon, 276 Or. 471, 555 P. 2d 435 (1976) .....	7
Security Trust Company of New York v. First National Bank of Rochester, 358 N.Y. Supp. 2d 943 (N.Y. 1974) .....	7
Statutes	
28 U.S.C. § 1254(1) .....	2
28 U.S.C. § 1332 .....	3
S. C. Code § 10.4-109 (1962) .....	3,5,6,7,8
S. C. Code §10.4-213(1)(c) (1962) .....	2,4,5,6,7,8

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SOUTH CAROLINA NATIONAL BANK

*Petitioner,*

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*Respondent.*

---

PETITION FOR WRIT OF CERTIORARI

To The Fourth Circuit Court of Appeals

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Petitioner, South Carolina National Bank, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, Opinion Number 77-1242, entered on April 18, 1978. Rehearing was denied on May 12, 1978.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unpublished and appears in the Appendix, *infra*. (App. ) The Order of the United States District Court for the District of South Carolina is reported at 449 F. Supp. 616 (D.S.C. 1978) and appears in the Appendix, *infra*. (App. )

## JURISDICTION

The opinion of the United States Court of Appeals for the Fourth Circuit was entered on April 18, 1978. A timely petition for rehearing was filed and was denied on May 12, 1978. An order was entered on August 7, 1978, in which the time for filing a petition for writ of certiorari was extended to and included October 9, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTION PRESENTED

Whether the Court of Appeals for the Fourth Circuit committed error in finding as a matter of law that under the Uniform Commercial Code a federally regulated national bank made final payment of an item making it accountable for the item when it had only completed the initial elements of its process of posting.

## STATUTES INVOLVED

The Uniform Commercial Code as adopted in South Carolina in South Carolina Code § 10.4-213(1) (1962),<sup>1</sup> provides:

- (1) An item is finally paid by a payor bank when the bank has done any of the following, whichever happens first:
  - (a) paid the item in cash; or
  - (b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
  - (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
  - (d) made a provisional settlement for the item and failed to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

<sup>1</sup> Since the trial, the 1976 Code of Laws of South Carolina has been published. The Uniform Commercial Code comprised Title 10.1 through 10.9 of the 1962 Code. The corresponding sections of the 1976 Code are found in Title 36.1 through 36.9.

Upon a final payment under subparagraphs (b), (c) or (d) the payor bank shall be accountable for the amount of the item.

The Uniform Commercial Code as adopted in South Carolina in South Carolina Code § 10.4-109 (1962), provides:

The "process of posting" means the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (a) verification of any signature;
- (b) ascertaining that sufficient funds are available;
- (c) affixing a "paid" or other stamp;
- (d) entering a charge or entry to a customer's account;
- (e) correcting or reversing any entry or erroneous action with respect to the item.

## STATEMENT OF THE CASE

This case was initiated by the plaintiff, North Carolina National Bank (NCNB), in the United States District Court for South Carolina, seeking recovery of the face amount of a \$160,000 check which it presented for payment to the defendant, South Carolina National Bank (SCN), in the course of collection through the federal reserve system. The check was presented to SCN, the payor bank, on July 1, 1975. SCN discovered that the check was not endorsed by the payee and returned it to NCNB on July 9. NCNB supplied the endorsement and, on July 14, again presented the check to SCN. SCN then returned the check for lack of funds to cover payment.

The District Court had jurisdiction of the action under 28 U.S.C. § 1332 since there was diversity of citizenship of the parties and since the amount in controversy exceeded \$10,000 exclusive of interest and costs.

In the District Court, NCNB contended SCN was liable on two grounds. It contended that SCN held the check beyond its "midnight deadline" and was, therefore, liable



under § 10.4-302, Code of Laws of South Carolina 1962. NCNB also contended that SCN had completed the "process of posting" within the meaning of § 10.4-213(1) (c), Code of Laws of South Carolina, 1962, and had, therefore, made "final payment" prior to returning the check.

The case was tried before the Honorable Robert F. Chapman, United States District Judge, without a jury, and he found that SCN had made final payment (prior to returning the check) because it had completed its process of posting under § 10.4-213(1) (c). Accordingly, he ruled that SCN was accountable for the item and did not reach the first issue raised by NCNB.

In reaching his conclusion Judge Chapman did not make any findings of fact as to the "usual procedure" followed by SCN in its "process of posting." However, the undisputed testimony showed that one of the final steps of the usual procedure at SCN was the physical inspection of items by the paying clerk.

Further, the testimony conclusively established that the check was returned to NCNB when the SCN paying clerk inspected the check in question and discovered that it was not endorsed. Nonetheless, the District Court ruled that SCN had made final payment of the check by completing the process of posting and was accountable for the amount of the item.

SCN appealed to the Fourth Circuit Court of Appeals. In a brief per curiam opinion the Fourth Circuit affirmed the District Court opinion.

#### REASONS FOR GRANTING CERTIORARI

This case presents novel and important questions concerning the interpretation of the Uniform Commercial Code and its application to federally regulated national banks. The decisions of the United States District Court for South Carolina and the Fourth Circuit Court of Appeals are contrary to the express language of the Uniform Commercial Code and are in

conflict with all other decisions which we were able to locate discussing the same issue.

The Uniform Commercial Code has been adopted by virtually every state in the country and its provisions govern the collection process for all banks. This erroneous decision which could affect virtually all national banks should not be allowed to stand.

#### A. THE DECISION OF THE COURT OF APPEALS IS CONTRARY TO THE EXPRESS LANGUAGE OF §§ 10.4-109 and 10.4-213(1) (c) OF THE UNIFORM COMMERCIAL CODE, WHICH APPLIES TO VIRTUALLY ALL NATIONAL BANKS.

In its brief per curiam opinion, the Court of Appeals rendered a cursory affirmation of the incorrect District Court opinion. The District Court found that final payment of the check occurred under § 10.4-213(1)(c) of the Uniform Commercial Code making SCN accountable for the amount of the check.

The error in this case is illustrated by examining the language used by the Court of Appeals. It stated:

Under the law of South Carolina, after "final payment" of a check, the payor is "accountable for the amount of the item." Such "final payment" occurs when the bank has "(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith." § 10.4-213(1) (c); 10.4-109.

... the District Judge found that SCNB had completed the initial elements of the "process of posting" prior to returning the check to NCNB and so concluded that "final payment" had been made before the return of the check.

Opinion No. 77-1242 at 2-3.

Quoting from § 10.4-213(1) (c), the Court recognized

that under this section final payment of an item cannot occur until the process of posting has been completed. Nonetheless, the Court apparently ignored this language and affirmed the District Court opinion even though the District Court had found that SCN had only completed the initial elements of the process of posting.

The Court of Appeals also referenced § 10.4-109 of the Uniform Commercial Code which defines the process of posting "as the usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank \* \* \*." The undisputed testimony in the District Court showed that under SCN's usual procedure a physical examination of the item was an integral part of the process of posting. Further, the testimony revealed that at the time the physical examination was made of the check in question it was found that it had not been endorsed and was returned to NCNB. Thus, the process of posting was never completed on the item in question and final payment could not have occurred under §§ 10.4-213(1)(c) and 10.4-109.

Obviously, the process of posting could not be completed if only the initial elements had been completed. The Court of Appeals recognized that only the initial elements in the process of posting had been completed. Nonetheless, the Court affirmed the opinion of the district judge which was contrary to the plain language of §§ 10.4-213(1)(c) and 10.4-109. This decision is contrary to the express language of the Uniform Commercial Code which governs the collection process for virtually all national banks and should be reversed.

**B. THE COURT OF APPEALS INTERPRETATION OF §§ 10.4-109 AND 10.4-213(1)(c) OF THE UNIFORM COMMERCIAL CODE CONFLICTS WITH ALL OTHER DECISIONS INTERPRETING THESE SECTIONS.**

The authorities are unanimous in holding that each and every step of the usual procedure followed by the payor bank must be completed before final payment occurs as a result of the completion of the process of posting. *Barnett Bank of Tallahassee v. Capital City First National Bank*, 348 So. 2d 643 (Fla. App. 1977); *Community Bank v. United States National Bank of Oregon*, 276 Or. 471, 555 P. 2d 435 (1976); *Security Trust Company of New York v. First National Bank of Rochester*, 358 N.Y. Supp. 2d 943 (1974); *Brown v. Southshore National Bank of Chicago*, 273 N.E. 2d 671 (Ill. App. 1971) Cf. *Citizens & Peoples National Bank of Pensacola v. United States*, 570 F. 2d 1279 (5th Cir. 1978).

We believe the analysis of the Florida Appellate Court in the *Barnett Bank of Tallahassee* case is appropriate. There, the court was concerned with whether the process of posting had been completed on a particular check so that it would have been finally paid under §§ 4-213(1)(c) and 4-109 of the Uniform Commercial Code. The court stated:

Therefore, under Florida law and the Uniform Commercial Code, Barnett's check could not have been "paid" unless the last step in the procedure usually followed by Capital City in determining to pay an item had been taken. Russ'l Grosvenor, Assistant Vice President of Capital City, gave undisputed testimony concerning Capital City's payment procedure. It is unnecessary to outline all the steps taken in the payment procedure, since prior to final payment all checks are stamped "paid" across the face of the check. A signature check is made after the paid stamp is affixed. Barnett's check does not have "paid" stamped across the face of the check and the back of the check is stamped "drawn against uncollected funds." It is clear that Barnett's check never went through the final steps of Capital City's payment process.

It therefore follows that the process of posting was never completed and thus final payment was never made.

348 So. 2d at 645.

The undisputed facts in this case show that the physical examination of items by the paying clerk was a part of the usual procedure of the process of posting at SCN. When the item in question was examined, it was returned to NCNB because it had not been endorsed. Thus, final payment of the check never occurred under § 4-213(1) (c) because the check was returned when it was determined that it was not in good form during the examination step of the "usual procedure" in the process of posting followed by SCN.

The decision of the Court of Appeals is contrary to all other decisions interpreting §§ 4-109 and 4.213(1)(c) of the Uniform Commercial Code. This erroneous interpretation of a uniform law governing federally regulated national banks should not be allowed to stand.

### CONCLUSION

The decision of the Fourth Circuit Court of Appeals conflicts with the express language of the Uniform Commercial Code and the decisions construing the Code. A reversal of this decision is required.

WHEREFORE, for the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

UNITED STATES COURT OF APPEALS  
For The Fourth Circuit

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No. 77-1242

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North Carolina National Bank,

Appellee,

v.

South Carolina National Bank,

Appellant.

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Appeal from the United States District Court for the  
District of South Carolina, at Greenville.

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(Argued: February 7, 1978

Decided: April 18, 1978

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Before BRYAN, Senior Circuit Judge, WIDENER and  
HALL, Circuit Judges

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F. Dean Rainey, Jr. (James W. Orr on brief) for Appellant;  
R. Frank Plaxco (Jack H. Tedards, Jr., Leatherwood,  
Walker, Todd and Mann on brief) for Appellee.

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## PER CURIAM:

South Carolina National Bank (SCNB) seeks review of the District Court's holding of it accountable under the Uniform Commercial Code, South Carolina Code of Laws, 1962, §10.1-101 et seq.,<sup>1</sup> for the face amount of a \$160,000.00 check presented for payment by plaintiff-appellee, North Carolina National Bank (NCNB).

The check in suit was presented to SCNB, the payor (or drawee) bank, on July 1, 1975. Despite insufficient funds in the drawer's account, an initial decision was made to pay the item on July 3, when it was stamped "paid". Subsequently, SCNB discovered that the check did not bear the payee's endorsement and returned it to NCNB on July 9. The latter supplied the endorsement and, on July 14, again presented the check to SCNB. This time, however, it was returned, for lack of funds to cover payment.

Under the law of South Carolina, after "final payment" of a check, the payor is "accountable for the amount of the item". Such "final payment" occurs when the bank has "(c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith." §§10.4-213 (1) (c); 10.4-109.

Tracking the check through the channels of each bank with a fix on the statute, the District Judge found that SCNB had completed the initial elements of the "process of posting" prior to returning the check to NCNB, and so concluded that "final payment" had been made before the return of the check. No error is here perceivable and we affirm upon his opinion. North Carolina National Bank v. South Carolina National Bank, No. 75-1815 (D.S.C. 1976)<sup>2</sup>

Affirmed.

<sup>1</sup>Since the trial, the 1976 Code of Laws of South Carolina has been published. However, for convenience, we will continue to identify sections of the South Carolina Code by the Title and Section numbers applicable to the 1962 Code. The Commercial Code comprises Title 10.1 through 10.9 of that Code. The corresponding sections of the 1976 Code are found in Titles 36.1 through 36.9.

<sup>2</sup>Appellant, SCNB, urges that it had a valid defense based on NCNB's asserted breach of the presentment warranty of good title under §10.4-207 (1) (a). We have no occasion to consider that defense since SCNB had become liable on the check regardless of NCNB's earlier failure to have the check properly endorsed.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

No. 77-1242

North Carolina National Bank,

Appellee,

versus

South Carolina National Bank,

Appellant.

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ORDER

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Upon consideration of the appellant's petition for rehearing and suggestion for rehearing en banc, and no judge having requested a poll on the suggestion for rehearing en banc,

It is ADJUDGED and ORDERED that the petition for rehearing is denied.

Entered at the direction of Judge Bryan for a panel consisting of Judge Bryan, Judge Widener, and Judge Hall.

For the Court,

/s/ William K. Slate, II

CLERK

FILED  
May 12, 1978

SUPREME COURT OF THE UNITED STATES

No. A-154

SOUTH CAROLINA NATIONAL BANK,  
Petitioner,

v.

NORTH CAROLINA NATIONAL BANK

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ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI

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Upon Consideration of the application of counsel for  
petitioner(s),

It Is Ordered that the time for filing a petition for writ of  
certiorari in the above-entitled cause be, and the same is  
hereby, extended to and including October 9, 1978.

/s/ William J. Brennan, Jr.

Associate Justice of the Supreme  
Court of the United States

Dated this 7th  
day of August, 1978.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Greenville Division

North Carolina National Bank	)	
Plaintiff,	)	
vs.	)	Civil Action 75-1815
South Carolina National Bank,	)	O R D E R
Defendant.	)	

This is an action to determine the accountability of the  
defendant, South Carolina National Bank (SCN), to the  
plaintiff, North Carolina National Bank (NCNB) for the  
full amount of a \$160,000 check under the provisions of  
the Uniform Commercial Code (UCC). It was tried before  
the Court without a jury on September 9, 1976.

NCNB contends that SCN made final payment of the item  
under the provisions of § 10.4-213 of the South Carolina  
Code of Laws and that it retained the check beyond the  
"midnight deadline" and is therefore accountable to it  
under the provisions of § 4-302.

Defendant answered alleging that the plaintiff  
breached its presentment warranty when presenting the  
check for collection in that it did not have "good title to  
the item or the authorization to obtain payment or  
acceptance on behalf of one who has good title" under  
§10.4-207(1). The defendant also contends that its  
delay in returning the check is excusable because of  
circumstances beyond its control as provided for in §10.4-  
108(2).

The Court has weighed the testimony and evidence  
presented at the trial, reviewed the exhibits introduced  
into evidence and studied the applicable law. In  
accordance with Rule 52, Federal Rules of Civil  
Procedure, the Court now makes the following

**FINDINGS OF FACT<sup>1</sup>**

1. Summerset Group, Inc. the drawer of the check, Kenway Corporation, the payee and Futren of St. Pete, Inc. were closely held corporations, the common management of which had been engaged, for at least one month prior to the presentment of the check in question, in a check "kiting" scheme between eight different checking accounts.<sup>2</sup>

2. On Monday, June 30, 1975, a check was deposited with NCNB by the Kenway Corporation which maintained a demand deposit account with NCNB. The check was made payable to Kenway Corporation, was dated June 30, 1975 and was drawn by Summerset Group, Inc. in the amount of \$160,000 upon a demand deposit account which was maintained at SCN's Myrtle Beach branch office in the name of Summerset Group, Inc.

3. After processing by the depository bank, NCNB, it was forwarded through the Regional Check Processing Center of the Federal Reserve System in Columbia, South Carolina on June 30, 1975 for presentment to the payor bank, SCN.

4. The check was received by SCN in its central check processing department in Columbia, South Carolina on Tuesday morning, July 1, 1975. It was sorted by the computer but the account on which it was drawn was not updated because there were not sufficient funds in the account to cover the check. It was "read" by the computer onto a report of insufficient funds (NSF) which is a computer print out of items for which there are not sufficient funds in the account of the drawer to cover the amount of the item. This check together with the other NSF items was pulled from the paid items and taken to the returns clerk with the NSF report and the NSF stamp was placed upon the check. The returns clerk then

<sup>1</sup> The findings of fact made by the Court have, for the most part, their basis in the Stipulation of Facts filed by the parties with the Court on September 9, 1976.

<sup>2</sup> Check "kiting" is a process where checks written on one account are continually covered with deposits of checks written on another account thereby creating positive statement balances and preventing overdrafts but resulting in a steadily increasing deficit in the collected balance in most of the accounts.

communicated with the Myrtle Beach branch office as to the disposition of the check. By approximately 7:00 p.m. on July 2, 1975 the returns clerk had the check, the NSF report and the Exception Report which contained the printed instructions from the Myrtle Beach branch office instructing that the check be paid notwithstanding the fact that there were insufficient funds in the account at that time to pay the check. The check was then processed as an overdraft and it was entered against the account of Summerset Group, Inc., drawer, on magnetic computer tape. On the morning of July 3, 1975, it was stamped paid and submitted to the check processing department. Subsequently, on Wednesday, July 9, 1975, seven days after SCN personnel had decided to pay the check, the paying clerk discovered that the check did not have the endorsement of the payee, Kenway Corporation. She telecopied this information to Myrtle Beach which advised that the check should be returned. The check was then returned to the corrections clerk, who prepared a bookkeeping credit, and the original debit was erased from the computer tape. It was then sent to the returns clerk, who prepared a return letter to the Federal Reserve Bank, and a phone call was then made to the Federal Reserve notifying it of the return. The check was then returned to NCNB.

5. NCNB received the check after its return on Friday, July 11, 1975, at which time its personnel placed the following stamp on the check "Credited to the account of the within named payee" and the check was again forwarded through the Regional Check Processing Center for delivery to SCN.

6. The check was delivered to SCN on Tuesday, July 14, 1975, at which time the SCN computer again produced a report that there were not sufficient funds in the account of Summerset Group, Inc. to pay the check. Upon the advice of SCN personnel in Myrtle Beach that the check should not be processed as an overdraft, it was returned on Wednesday, July 15, 1975.



7. A power failure at approximately 7:00 p.m. on Monday, June 30, 1975 rendered SCN's computer inoperable. Power was restored and the computer was again operable at 6:00 a.m. on Tuesday, July 1, 1975. SCN's operations center prepared and distributed a notice to its correspondent banks stating that "(t)hese circumstances beyond our control have caused a delay of 24 hours in presentment of our return items with regard to incoming cash letters received on June 30, and items exchanged in the Clearing House on June 30. In addition our outgoing Cash Letters which normally would have been mailed on June 30, were not mailed until July 1."

### CONCLUSIONS OF LAW

The Court has jurisdiction of this action under 28 U.S.C. §1332 since there is diversity of citizenship of the parties and since the amount in controversy exceeds \$10,000 exclusive of interest and costs.

The Uniform Commercial Code provides in §4-213 (§10.4-213 of the South Carolina Code of Laws) that final payment of an item by a payor bank occurs when the bank has

- "(a) paid the item in cash; or
- (b) settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearing house rule or agreement; or
- (c) completed the process of posting the item to the indicated account of the drawer, maker or other person to be charged therewith; or
- (d) made a provisional settlement for the item and fail to revoke the settlement in the time and manner permitted by statute, clearing house rule or agreement.

Upon a final payment under subparagraph (b), (c) or (d) the payor bank shall be accountable for the amount of the item."

NCNB asserts that final payment was made under this section relying primarily upon the "midnight deadline", §(d) of §10.4-213, which is more clearly stated in §10.4-302. That section provides that

"In the absence of a valid defense such as breach of a presentment of warranty (subsection (1) of §10.4-207), a settlement affected or the like, if an item is presented on or received by a payor bank the bank is accountable for the amount of (a) a demand item other than a documentary draft whether properly payable or not if the bank . . . does not pay or return the item or send notice of dishonor until after its midnight deadline . . ."

The "midnight deadline" with respect to a bank is "midnight on its next banking day following the banking day on which it receives the relevant item or notice or from which the time for taking action commences to run, whichever is later." §10.4-104(1)(h). It is not disputed that SCN failed to return the check within its midnight deadline. The check was received by SCN on the morning of July 1, 1975 so that its midnight deadline was midnight of July 2, 1975. SCN did not return the check until July 9, 1975, the fourth banking day after the expiration of the midnight deadline.<sup>3</sup>

SCN, however, contends, in addition to its defense that the computer breakdown caused the delay,<sup>4</sup> that NCNB

<sup>3</sup> While seven days passed before SCN returned the check, three of those days were not "banking days" within the meaning of §10.4-104(1) (c); Friday, July 4, 1975 was a holiday.

<sup>4</sup> Section 10.4-108(2) provides that "delay by a . . . payor bank beyond time limits prescribed or permitted by this act . . . is excused if caused by . . . circumstances beyond the control of the bank provided it exercises such diligence as the circumstances require." SCN contends that the breakdown of the bookkeeping computer system is a "circumstance beyond the control of the bank" and, therefore, excuses their failure to act within the midnight deadline. That section, in addition, provides that a bank must "exercise such diligence as the circumstances require" before delay will be excused. Here the computer failure occurred prior to the receipt of the check in question by SCN. In fact, the computer was in operation by the time the check was received to the extent that it produced a report of insufficient

breached its presentment warranty of good title under §10.4-207(1) (a) by presenting a check for payment without the payee's endorsement either directly made by the payee or supplied by the depository bank in accordance with §10.4-205. If NCNB did breach its presentment warranty, it would be a valid defense to the payor bank's failure to return the check or give notice of dishonor within its midnight deadline. §10.4-302. The Court does not reach this issue, however, since the defendant made final payment by "completing the process of posting" and thus is "accountable for the amount of the item." §10.4-213(1) (c).

Section 10.4-109 of the UCC defines the "process of posting" as

"The usual procedure followed by a payor bank in determining to pay an item and in recording the payment including one or more of the following or other steps as determined by the bank:

- (a) verification of any signature;
- (b) ascertaining that sufficient funds are available.
- (c) affixing a 'paid' or other stamp;
- (d) entering a charge or entry to a customer's account;
- (e) correcting or reversing an entry or erroneous action with respect to the item."

Here the computer determined that there were insufficient funds in the account and did not debit the account. Nevertheless the returns clerk for SCN examined the check and the NSF report, received advice to pay the item notwithstanding the lack of funds in the drawer's account, physically marked the check paid, and

<sup>4</sup> (cont'd)

funds in the account of Summerset Group, Inc. Even assuming that the computer failure had caused a delay of 24 hours in processing items as stated in the defendant's notice which was sent to its correspondent banks, a delay of four days is not "such diligence as the circumstances require" under the facts of this case. Section 10.4-108(2), therefore, does not provide a tenable defense.

charged the customer's account creating an overdraft. At this time SCN had decided to pay the check and had recorded that decision. In fact, the testimony of SCN's Assistant Vice-President in charge of bookkeeping both at the trial and in her deposition, indicated that SCN could have and normally, would have returned the check within its midnight deadline had the check been considered an item to be returned.<sup>5</sup>

<sup>5</sup> The deposition of Betty B. Moss, Assistant Vice President in charge of bookkeeping for SCN reflects that since SCN had decided to pay the check and since the priorities in terms of processing had been completed there was no problem in delaying its further processing: A. She had it and she got finished with what she needed to do, but by the time we finished out at the Operations Center to get those items back to the Proof Department, they were closed out for the day. It went in the following morning's work. Because we were going to pay it, we found no problem with holding this.

Q. If you had decided to return it . . .

A. It would have gone out on the second.

Q. For whatever reason, it would have gone out, right?

A. Yes.

Q. Notwithstanding your computer breakdown, you were capable of processing, right?

A. Yes.

Q. Because you decided not to, this no longer had a priority in terms of processing? Right?

A. Yes.

Q. What you were doing was breaking your neck to handle those that were subject to requirements for processing in your judgment, right?

A. Yes.

Q. The Check at that point in time had been looked at by Barbara Ferguson and had been looked at by Susan Dominick? Right?

A. Yes.

Q. So she sent it back for processing?

A. Yes.

Q. It was paid?

A. Yes.

Q. Was the stamp applied to the check that said "Paid"?

A. Yes, that is what that has to be on the later one. You can't very well read it on yours, and it won't show up on that first film, because that is intentional. This one should show it.

OFF THE RECORD

Q. So after Susan sent it back to Workflow and said, "Pay it", then it went back through and another stamp was applied by machine that indicated that the item was paid? Is that right?

(cont'd)

Although reliance might be placed upon §10.4-109(e) which provides for the correction or reversal of an erroneous entry, it would be misplaced since the draftsman of Article 4 never intended that this subsection allow the undoing of the process of posting once it has been completed.<sup>6</sup> Rather, it was intended for those situations "in which the bank's computer automatically debited an account for a check that the bank did not intend to pay (as for example because it was NSF)." J. White and R. Summers, Uniform Commercial Code 535-36 (1972).<sup>7</sup> Given such a case a bank official will typically examine the print out, make the decision not to pay the check and reverse the entry on the next computer run. Here, the check was not automatically debited from Summerset Group's account, but was printed out as an NSF item. At that time, SCN personnel decided to pay the check notwithstanding its NSF status.

SCN had, therefore, made "final payment" of the check by completing the process of posting under the provisions of §§10.4-109 and 10.4-103 of the UCC and is thus "accountable for the amount of the item." §10.4-213.

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<sup>5</sup> (cont'd)

A. Yes.

Q. And it was paid that that time?

A. Yes.

Deposition of Betty B. Moss at 35-36.

<sup>6</sup> J. White and R. Summers, Uniform Commercial Code 535-36 (1972); Malcolm, Reflections on West Side Bank: A Draftsman's View, 18 Catholic U.L. Rev. 23 (1968).

<sup>7</sup> One case has decided otherwise, *West Side Bank v. Marine Nat'l Exh. Bank*, 37 Wisc. 2d 661, 155 N.W. 2d 587 (1968), but it has been the subject of much comment unanimously agreeing that the Court erroneously interpreted §§4-213 and 4-109. See J. White and R. Summers, Uniform Commercial Code 535 and n.34 (1972).

Accordingly, the Clerk shall enter judgment in favor of the plaintiff North Carolina National Bank.  
AND IT IS SO ORDERED.

*s/Robert F. Chapman*

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ROBERT F. CHAPMAN  
UNITED STATES DISTRICT JUDGE

October 26, 1976

Florence, South Carolina



**United States District Court**

FOR THE

DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

CIVIL ACTION FILE NO. 75-1815

NORTH CAROLINA NATIONAL BANK	}	JUDGMENT
us.		
SOUTH CAROLINA NATIONAL BANK		

This action came on for trial before the Court, Honorable Robert F. Chapman, United States District Judge, presiding and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff, NORTH CAROLINA NATIONAL BANK, recover of the defendant, SOUTH CAROLINA NATIONAL BANK, the sum of One-Hundred and Sixty Thousand & 00/100 (\$160,000.00) Dollars, and its costs of action.

Dated at Columbia, South Carolina, this 27th day of October, 1976.

Miller C. Foster, Jr.  
Clerk of Court

Linda L. Berridge  
Deputy Clerk

**United States District Court**

FOR THE

DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION

CIVIL ACTION FILE NO. 75-1815

NORTH CAROLINA NATIONAL BANK	}	A M E N D E D JUDGMENT
us.		
SOUTH CAROLINA NATIONAL BANK		

This action came on for trial before the Court, Honorable Robert F. Chapman, United States District Judge, presiding, and the issues having been duly tried and a decision having been duly rendered,

It is Ordered and Adjudged that the plaintiff, NORTH CAROLINA NATIONAL BANK, recover the defendant, SOUTH CAROLINA NATIONAL BANK, the sum of One-Hundred and Sixty Thousand & 00/100 (\$160,000.00) Dollars, plus interest from July 2, 1975, and its cost of action.

Dated at Columbia, South Carolina this 29th day of October, 1976.

Miller C. Foster, Jr.  
Clerk of Court

Linda L. Berridge  
Deputy Clerk



Supreme Court, U. S.

FILED

NOV 8 1978

MICHAEL RODAK, JR., CLERK

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IN THE

# Supreme Court of the United States

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No. 78-593

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SOUTH CAROLINA NATIONAL BANK,

*Petitioner,*

*versus*

NORTH CAROLINA NATIONAL BANK,

*Respondent.*

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BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI

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*Counsel For Respondent*

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IN THE  
**Supreme Court of the United States**

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No. 78-593

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SOUTH CAROLINA NATIONAL BANK,  
*Petitioner,*

*versus*

NORTH CAROLINA NATIONAL BANK,  
*Respondent.*

---

**BRIEF IN OPPOSITION TO PETITION  
FOR WRIT OF CERTIORARI**

---

**QUESTIONS PRESENTED**

I. Whether the Fourth Circuit Court of Appeals was correct in affirming the Order of the District Judge, sitting as the trier of fact without a jury, that Petitioner had made final payment of the check in question and had thereby become accountable to the Respondent for the amount of the check.

II. [By way of additional sustaining ground] Whether the Petitioner became accountable to the Respondent for the amount of the check by holding the check beyond its midnight deadline, as provided by Section 10.4-302 of the South Carolina Code of Laws (1962).

### STATEMENT OF THE CASE

The Statement of the Case in the Petition (Pet. 3-4) omits several of the material facts of the case. The facts are concisely stated in the Order of the trial court (Pet. 16-18). Of particular importance is the fact that, when the check in question was first presented for payment to the Petitioner (SCN), there were insufficient funds in the account of the drawer to pay the check. The check was removed from the standard flow of automated processing and manually handled by at least two different clerks. An inquiry was made to the branch bank handling the account, which instructed that the check be paid notwithstanding the insufficient funds. The check was then processed as an overdraft, entered against the account of the drawer, and stamped paid. This had occurred by the morning of July 3, 1975. It was not until July 9, 1975, that the lack of endorsement was discovered and the check was returned to the Respondent (NCNB). After NCNB supplied the endorsement and returned the check, the check was again removed from the standard flow of automated processing because of insufficient funds. It was only at this time that SCN declined to pay the check because of the insufficient funds.

In its Statement of the Case, the Petitioner contends that Judge Chapman made no findings concerning SCN's usual procedure in the process of posting. The Respondent disagrees. In his Order Judge Chapman summarized the facts concerning SCN's handling of the check<sup>1</sup> and in the next sentence paraphrased the language of the statute defining the process of posting.<sup>2</sup> Obviously, Judge Chapman concluded that the stated facts satisfied the statutory definition of the process

<sup>1</sup>"Nevertheless the returns clerk for SCN examined the check and the NSF report, received advice to pay the item notwithstanding the lack of funds in the drawer's account, physically marked the check paid, and charged the customer's account creating an overdraft." (Pet. 20-21.)

<sup>2</sup>"At this time SCN had decided to pay the check and had recorded that decision." (Pet. 21.)

of posting and constituted SCN's usual procedure for handling checks under such circumstances. Judge Chapman then quoted an excerpt from the testimony of an SCN officer further demonstrating that its "usual procedure" in such factual circumstances had in fact been completed. (Pet. 21, fn. 5.)

### REASONS FOR DENYING THE WRIT OF CERTIORARI

I. *The case involves no federal question and no issue of federal interest.*

Jurisdiction of this case was based upon diversity of citizenship. The case involves the interpretation of provisions of the South Carolina Code of Laws, as set out in the Petition for Writ of Certiorari (Pet. 2-3). No federal statutes or constitutional provisions are involved in any way. Neither the statutes nor the facts of the case have any relationship to the status of the parties as National Banks.

The statutes involved are portions of the Uniform Commercial Code, as adopted in the State of South Carolina, but this does not alter their status as portions of the statutory law of South Carolina. This Court has not previously accepted the task of serving as final arbiter of the Uniform Commercial Code, or of the numerous other Uniform Acts, regardless of their stated objective of uniformity or their adoption by more than one state. The Respondent would suggest that there is certainly no compelling reason to undertake that task in the present case.

II. *The decision of the Fourth Circuit Court of Appeals has not created a conflict with the decision of any other Court of Appeals.*

The Petitioner does not even suggest that there is a conflict among the several Courts of Appeals as to this question. The cases cited in the Petition (Pet. 7) are exclusively state court decisions. The single federal case mentioned<sup>3</sup> is cited

<sup>3</sup>Citizens & Peoples National Bank of Pensacola v. United States, 570 F.2d 1279 (5th Cir. 1978).

only by way of analogy; it involves different provisions of the Uniform Commercial Code and a totally different factual situation. This is certainly not a case which would come within the provisions of Rule 19 (b) of the Supreme Court Rules dealing with decisions creating a conflict among the Courts of Appeals.

There is, in fact, no conflict between the decision of the Fourth Circuit and the state court decisions cited in the Petition. None of those cases are based upon the fact situation presented in the present case, as described in the Order of the trial court (Pet. 16-18). The trial judge gave full consideration to the definition of the process of posting and reached his decision by applying that definition to the facts of this case.

III. *The case turns upon a factual finding by the trial judge, who was sitting as the trier of fact without a jury.*

The basis for the decision of the trial court was its factual finding, based upon the testimony of SCN's own witness, that SCN had in fact completed its "usual procedure" for determining to pay an item and recording the payment thereof. After outlining the handling of this check by SCN, the trial court concluded: "At this time SCN had decided to pay the check and had recorded that decision." (Pet. 21.)

In both its Statement of the Case (Pet. 3-4) and its argument, SCN oversimplifies the facts of the case by omitting the facts upon which the trial court relied in its decision. This was not a check handled routinely and without human intervention by SCN's check processing department. When first processed, the check was "kicked out" because there were insufficient funds in the account of the drawer of the check. At this point the check was manually handled by a returns clerk, who communicated with a branch office as to the disposition of the check. The decision was made to pay the check notwithstanding the fact that there were insufficient funds in the account. At least two different clerks handled the

check manually and looked at it prior to processing as an overdraft. (Pet. 21, fn. 5.) It was not until a week after the decision to pay the check that another clerk discovered that the check did not have the payee's endorsement. The check was then returned to NCNB, which supplied the endorsement and returned the check to SCN. Again the check was "kicked out" because of insufficient funds, and this time SCN decided not to pay the check. (Findings of Fact, Pet. 16-17.)

Obviously, SCN's usual procedure for handling a check "kicked out" because of insufficient funds is different from its usual procedure for handling a check which is processed without incident. The finding by the trial court is clearly summarized in his Order:

Nevertheless the returns clerk for SCN examined the check and the NSF report, received advice to pay the item notwithstanding the lack of funds in the drawer's account, physically marked the check paid, and charged the customer's account creating an overdraft. At this time SCN had decided to pay the check and had recorded that decision. (Pet. 20-21.)

Perhaps the most telling evidence was the deposition testimony of SCN's officer in charge of bookkeeping, quoted at length by the trial judge in footnote 5 of his Order. (Pet. 21-22.) Referring to the acknowledged fact that a payor bank must process checks and determine whether to pay them within its "midnight deadline" (Pet. 19), this officer acknowledged that SCN held the check in question far beyond that deadline before discovering the missing endorsement because the decision had already been made to pay the check. "Because we were going to pay it, we found no problem with holding this." (Pet. 21, fn. 5.) In other words, the process of posting for that check had been completed, and there was no need to give it any further priority in terms of processing.



This discussion demonstrates that the decision below was based upon a factual decision made from the evidence by the trier of fact. Respondent submits that such a factual finding is not a subject which should be reviewed by this Court.

#### CONCLUSION

For the foregoing reasons, Respondent submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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